TXU

TXU Business Services
1601 Bryan Street
Dallas, TX 75201-3411

October 31, 2001

Mr. James L. Connaughton
Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, N.W.
Washington, D.C. 20503

Dear Mr. Connaughton:

TXU Business Services submits the following comments on behalf of TXU Electric Transmission, TXU Electric & Gas, TXU Lone Star Pipeline, TXU Fuel, and TXU Generation (hereinafter referred to as TXU) concerning the Council on Environmental Quality's (CEQ) request for comments on improving and streamlining the permitting process for energy-related projects as published in the Federal Register on August 20, 2001. The principal business of TXU is the production, transmission and distribution of electricity and natural gas in north, central, east, and west Texas for approximately one-third of the population and area of the State.

The Administration has shown great leadership in focusing attention on the importance of creating a national energy policy. TXU appreciates the efforts of the Administration in examining ways to streamline and expedite the permitting process to ensure that energy-related projects are completed in a timely and efficient manner. Energy demand is expected to continue to escalate, placing additional demands on the nation's energy infrastructure. Streamlining the process will help to bring infrastructure improvements on-line more rapidly and allow industry to provide much needed energy to their customers.

Transmission and Distribution Projects

One of TXU's principal businesses is conducted through intrastate transmission and distribution (T&D) companies that provide electricity and natural gas to 4.1 million customers over 13,000 miles of transmission lines and 30,000 miles of pipe. Since our T&D operations are primarily regulated by the Public Utility Commission of Texas (PUC) and the Railroad Commission of Texas (RCT), TXU will not provide comments on federal siting issues, but instead will focus on suggestions to expedite and streamline the permitting process from an environmental standpoint.

Prior to construction of an electric or gas transmission or distribution project, environmental assessments are performed to determine potential impact to the proposed route. As a result of these surveys, authorizations and/or environmental permits must be obtained through agencies such as the U.S. Army Corps of Engineers (USACE) for impacts to jurisdictional waters and the U.S. Environmental Protection Agency (EPA) for permits relating to the discharge of stormwater.

To obtain a USACE permit, the following activities must be completed:

- Determine the impact to jurisdictional waters. Jurisdictional waters are described as wetlands, streams, ponds, and other waters deemed to be navigable by the USACE.
- Provide the acres of forested and non-forested wetlands that are to be cleared and describe the process of how they are to be cleared.
- Provide the amount of temporary roads that will be in the jurisdictional area.
- Provide the number of permanent and/or temporary structures that are located in the jurisdictional area.
- Provide a mitigation plan (if required) to mitigate for the impact due to the construction of the project.
- Conduct a cultural resource study to determine if any cultural resources will be disturbed during the construction of the project. The scope to be negotiated with the Texas Historical Commission (THC) and the USACE.

The problems with providing the above information are the following:

- Since the route has not been approved, the final design has not been completed and providing specific information on structure location is difficult.
- The jurisdictional waters cannot be determined by aerial photographs alone. An onsite investigation must be done and this requires access to the right-of-way which has not yet been finalized.
- The cultural resource study requires that a Cultural Resources Research Design plan be developed. The plan identifies high probability areas and includes recommendations on whether additional ground surveys should be performed. This plan is submitted to the THC, who has 30 days to review and provide comment. If the THC provides comments that alter the plan, additional delays could follow.
- Once approved by the THC, the recommendations from the plan are initiated. This may include an onsite investigation that requires, at a minimum, walking the site and shovel testing every 200-ft in the areas that the USACE specifies, or on the other end of the spectrum, using heavy, mechanized equipment at every potential structure that may be located in the area of concern. The results of these actions are included in a final Research Report submitted to the THC.

To obtain authorization under a Stormwater Permit for construction activities exceeding five acres, a Stormwater Pollution Prevention Plan must be submitted and the following activities completed:

- A survey is performed to determine the presence of threatened and/or endangered species. This survey can only occur at certain times of the year when the species is present. If threatened and/or endangered species or their habitat is discovered, consultations take place with the U.S. Fish and Wildlife Service (USFWS) to determine the extent of disturbance. Mitigation plans are developed with the USFWS who has 45 days to review and provide comment. If comments are made and the plan modified, the 45-day clock may begin again. USFWS may ultimately require financial mitigation for the disturbed areas.
- In January 2003, the five-acre threshold will be lowered to a one-acre threshold. This will significantly increase the number of projects that will require stormwater permitting.

TXU understands and supports the need to protect the environment while providing reliable energy services. However, the administrative burdens placed on the regulatory agencies and the regulated community are tremendous. TXU suggests the following actions to help expedite the permitting process while continuing to protect human health and the environment.

- Encourage regulators to streamline the approval processes. This can be accomplished through the development of "blanket agreements" and "boilerplate management plans" that are prepared and approved by the agencies prior to construction. These blanket authorizations/agreements would eliminate the minimum review periods (30, 45 days, etc.) that are currently in place.
- EPA should repropose the Phase II stormwater rule to exempt electric and natural gas transmission and distribution facilities from construction requirements. These facilities are vital to consumers in providing continued reliability of electric and gas services and are constructed using best management practices to ensure minimal impact to the environment.
- Regulatory agencies may want to consider assigning a person or a group of persons within their organization to handle utility project approvals from the beginning to the end of a project so that the regulated community can work with a person/or persons who has knowledge of the project throughout the entire process.
- The regulated community should provide educational field trips for agency personnel so staff will have first hand knowledge of the actual process involved in siting activities.

To assist in the CEQ's review, attached is a document that explains the requirements for licensing and certification of new electric transmission facilities in Texas.

Power Plants

TXU Generation currently owns and operates 23 power plants in Texas. Under federal regulations (40 CFR Parts 51 and 52), physical and operational changes at these plants which result in a significant net increase in the emission of certain air pollutants are subject to Prevention of Significant Deterioration (PSD) permitting requirements in conjunction with federal New Source Review requirements. However, any routine maintenance activity or an increase in the hours of operation is specifically excluded from PSD permitting requirements. EPA has produced a policy guidance that is so narrow as to exclude basic repair and maintenance activities from the category of "routine maintenance" (i.e., maintenance that is not subject to PSD requirements). Depending upon the nature of a project and the location, the PSD permitting process can take one to two years, or more in some cases.

Each TXU plant is routinely engaged in the evaluation of possible plant maintenance and process improvement projects. These projects help assure plant availability and reliability and result in improved energy efficiency. This results in the use of less fuel and a reduction in air emissions per unit of electrical output. Moreover, since these projects occur at an existing, operating facility and usually require only a few weeks to implement, the energy efficiency gains are quickly realized (as opposed to installation of new energy efficient production units, which take two to four years to permit and construct).

However, the EPA guidance produces a significant negative incentive to pursue such energy efficient projects at existing facilities by requiring that some such projects go through the PSD permitting process. More flexible EPA policy regarding what constitutes routine maintenance is needed and specifically allowed under the Clean Air Act in order to remove the current PSD permitting disincentive that exists for some of these projects.

TXU hopes the information provided will assist the CEQ and federal agencies in determining ways to expedite the permitting process for energy-related projects so that the energy needs of the nation can be supplied in a efficient and timely manner.

Thank you for the opportunity to comment.

Sincerely,

Shawn Glacken

Pamela Shawn Glacken

REQUIREMENTS FOR LICENSING AND CERTIFICATION OF NEW TRANSMISSION FACILITIES

INTRODUCTION

Most states require a formal review and approval process for proposed electric transmission facilities. In Texas, this process is accomplished through the filing of a request for certification with the Public Utility Commission of Texas (PUC). The certificate granted by the PUC is called a Certificate of Convenience and Necessity (CCN).

When a need to expand the TXU Electric transmission system is apparent, two major determinations are made:

(1) The need for the expansion is firmly established and documented. The essential facilities are clearly identified as to type, system electrical location, and capacity. These facilities must be certified by the PUC as follows:

(a) The PUC may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

(b) The PUC may issue the certificate as requested; grant the certificate for the construction of a portion of the requested system, facility, or extension or the partial exercise of the requested right or privilege; or refuse to grant the certificate.

(2) The actual study area is then proposed for the expansion, which balances the need for the facilities with the physical, aesthetic, and electrical impacts. Factors to be considered in routing proposed transmission lines are set forth as follows:

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after considering:

(1) the adequacy of existing service;
(2) the need for additional service;
(3) the effect of granting the certificate on the recipient of the certificate and on any electric utility serving the proximate area;
(4) other factors such as community values; recreational and park areas; historical and aesthetic values; environmental integrity; and the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted.

The PUC must approve or deny an application for a certificate for a new transmission facility not later than the first anniversary of the date the application is filed. If the commission does not approve or deny the application on or before that date, a party may seek a writ of mandamus in a district court to compel the commission to decide on the application.

Expedited Approval

Transmission line certification requests qualifying for expedited approval can qualify in one of two, or both, of the following categories:

(1) An uncontested transmission line shall be approved administratively within 80 days from the date of filing a complete application if no motion to intervene has been filed (or, the application is uncontested) and the PUC has determined the application meets all applicable statutory criteria and filing requirements;

(2) Applications for transmission lines which have been designated by the Electric Reliability Council of Texas (ERCOT) Independent System Operator (ISO) as critical to the reliability of the ERCOT system shall be considered by the commission on an expedited basis. The commission shall render a decision approving or denying an application under this criterion within 180 days of the date of filing a complete application.

These specified jurisdictional timeframes for certificate approval, however, do not take into account several aspects of the pre- and post-filing process that significantly impact the estimated time for putting a new facility into service.

TXU Electric's experience has shown that the requirements for project planning, from the identification of need (pre-filing), through the filing period, and completion of construction (post-filing), should include a minimum 42 month window for completion.

PRE-FILING

The period of application pre-filing includes the completion of the identification and verification of the need. The planning process varies considerably from project to project (and therefore the required planning period varies) and includes planning for project types that have been previously included in the company transmission plan where advance need is known, to projects that satisfy a customer service request where lead time is minimal.

The pre-filing period, however, is primarily consumed by the establishment of a constraint area, analysis of the constraint area and development of preliminary and final alternative routing. TXU Electric's practice is to contract an independent consultant for the definition of constraint area and performance of an alternative route analysis in conjunction with an environmental assessment. The consultant normally outlines a general study area; contacts local, state and federal agencies; and reviews existing information covering the study area, including topographic maps, county highway maps, recent aerial photographs, environmental databases and other published data. After reviewing this information, numerous preliminary alternative routes are identified. Excluding planning, TXU Electric builds an interval of 6 months into this phase of the CCN process.

The PUC changed certification rules regarding public involvement in the routing process by requiring utilities (at an affected landowner threshold) to hold at least one, and possibly multiple (at the utility's discretion) public meeting(s) prior to the filing of its licensing application. The

public meeting requirement would be initiated at the point of preliminary alternative route identification. The inclusion of public participation then allows for the selection of primary alternative routing, to be subjected to detailed environmental analysis by the consultant and engineering and cost analyses by the utility. The presentation of preferred and alternate route selections by the consultant allows TXU Electric to make a decision regarding routing choice and consider any outstanding routing issues prior to application preparation. Due to the sensitivity of the subject and often-negative opinion associated with projects of this type, experience has shown this stage of pre-filing to be the most contentious and time consuming.

When TXU Electric is satisfied that all potential obstacles to certification have been cleared prior to filing, the actual application preparation and review comprise the remaining time prior to filing. TXU Electric includes a minimum time of 12 months in the CCN schedule for public participation in routing, resolution of routing issues prior to application filing, and preparation and review of the application for filing.

FILING

The processing of an application for certification of new transmission facilities follows the following general format (for the uncontested case):

(1) Application submitted/filed with PUC, formal public notification;
(2) Intervention period begins;
(3) Application sufficiency review by PUC;
(4) Additional information provided by utility (as necessary);
(5) Application accepted; PUC Hearings Examiner assignment;
(6) Staff recommendation (resolution of contested issues);
(7) Draft order issued; applicant/intervenor exceptions filed;
(8) PUC Order issued.

The processing of an application for certification of new transmission facilities follows the following general format (for the contested case):

(1) Application submitted/filed with PUC, public notification;
(2) Intervention period begins;
(3) Application sufficiency review by PUC;
(4) Additional information provided by utility (as necessary);
(5) Application accepted; PUC Hearings Examiner assignment; Intervention occurs.
(6) Application referred to SOAH; pre-hearing conference/hearings schedule set;
(7) Discovery/Testimony filing period;
(8) Hearing on the Merits;
(9) Briefing period;
(10) SOAH Proposal for Decision issued;
(11) Applicant/intervenor exceptions to proposal filed;
(12) Proposed Order returned to PUC;
(13) PUC Order issued.

As previously discussed, the jurisdictional deadline for approval or denial of new transmission facilities can vary from 80 days to one year. Although the case of a CCN filing without intervention is possible, and expeditious treatment of the application once filed does happen, the most accurate planning scenario for estimating the processing of a filed application requires the inclusion of the worst case. Excluding the case of the ERCOT constraint mitigation project, TXU Electric includes a 12-month interval in planning for the processing of the filed CCN application.

POST-FILING

The receipt of the certificate, and fulfilling the requirements of normal pre-construction filings, completes the regulatory qualifications for new transmission facilities, allowing the actual construction to proceed. Of course, the overall lead time that must be considered in calculating a final service date must include the time to actually construct the new transmission facilities. As might be presumed, this time is project specific and dependent, to include such variables as completion of environmental and other permitting; the necessary materials required and the lead time essential to acquire such materials (that may include specialized equipment); the amount of right-of-way remaining outstanding and time built into a schedule for negotiation with remaining landowners, or condemnation proceedings; and the actual physical size of the project and the required time to complete the work.